IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-0801277 C-0801278
Plaintiff-Appellee,	:	TRIAL NOS. B-0805918 B-0806110
vs.	:	
LESLIE M. HICKSON,	:	*JUDGMENT ENTRY.*
Defendant-Appellant	:	
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Defendant-appellant Leslie M. Hickson ("Hickson") was separately indicted for one count of burglary and three counts of receiving stolen property under two case numbers (two counts of receiving stolen property under B-0805918; one count of burglary and one count of receiving stolen property under B-0806110. The receiving-stolen-property charge under case B-0806110 was eventually dismissed). Hickson allegedly entered, without permission, a Cincinnatian Hotel guest room and accosted the housekeeper cleaning the room. At or around this time, in a separate incident, a purse was stolen from the downtown office of the Property Management Company.

Approximately one month later, after being arrested on a charge unrelated to this case, police discovered Hickson with two credit cards belonging to the employee

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

whose purse had been stolen from the Property Management Company's office. Police arrested Hickson, and he was eventually indicted for one count of burglary in relation to the Cincinnatian Hotel incident and two counts of receiving stolen property in relation to the Property Management Company incident.

Prior to trial, the prosecution moved that Hickson's indictments be consolidated. The trial court granted this motion, and Hickson's trial proceeded with both case numbers being tried simultaneously. The jury found Hickson guilty of one count of burglary and two counts of receiving stolen property. The trial court sentenced Hickson to eight years' confinement on the burglary count and to one year for each of the receiving-stolen-property counts. The sentences were consecutive for a total of ten years' confinement. Hickson has appealed, asserting two assignments of error.

In his first assignment of error, Hickson claims that the trial court erred when it allowed joinder of the two separate indictments. Hickson insists that he was substantially prejudiced and denied a fair trial when the court permitted the joinder of the burglary charge from case B-0806110 with the two receiving-stolen-property charges from case B-0805918.

Crim.R. 13 allows two or more indictments to be tried together provided that the offenses could have been joined in a single indictment. Crim.R. 8(A) permits joinder of offenses in a single indictment provided that the offenses "are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct." Joinder and the avoidance of multiple trials are favored for a variety of reasons, not the least of which

are convenience to the witnesses, and the conservation of time and expense.[2] The defendant claiming error in a joinder has the burden of showing that his rights were prejudiced and must demonstrate that the trial court abused its discretion by refusing to separate the charges for trial.[3]

Hickson has not demonstrated that his rights were prejudiced or that the trial court abused its discretion. As we have previously held, "[w]hen a defendant claims that he is prejudiced by the joinder of multiple offenses, a court must determine (1) whether evidence of the other crimes would be admissible even if the counts are severed, and (2) if not, whether the evidence of each crime is simple and distinct."[4] In Hickson's case, the second prong was not met. The evidence for the two incidents in this case was fairly distinct: the burglary charge involved entering a hotel room uninvited and physically grabbing a hotel employee, while the two charges of receiving stolen property involved being found with two stolen credit cards. Further, the possibility of jury confusion, in and of itself, was not enough to demonstrate prejudice.[5] Hickson makes no argument in his first assignment of error other than the possibility of jury confusion. Under these circumstances, we overrule his first assignment of error.

In his second assignment of error, Hickson claims that the trial court erred when it sentenced him to consecutive one-year terms for the receiving-stolen-property counts. Hickson argues, pursuant to R.C. 2941.25, that the two counts involved offenses of similar import that were not committed separately, and that there was no separate animus as to each stolen credit card. Thus, pursuant to statute,

[2] *State v. Torres* (1981), 66 Ohio St.2d 340, 343, 421 N.E.2d 1288, citing *State v. Thomas* (1980), 61 Ohio St.2d 223, 400 N.E.2d 401.
[3] Id.
[4] *State v. Jones*, 1st Dist. No. C-070666, 2008-Ohio-5988, at ¶7.
[5] Id. at ¶8, quoting *State v. Allen*, 2006-Ohio-2338.

he concludes that the two receiving-stolen-property counts should have been merged for sentencing.

The defendant has the burden of demonstrating that he is entitled to the protection provided by R.C. 2941.25.[6] Hickson has not met this burden. During the sentencing phase of the trial, Hickson denied that he had stolen the credit cards, maintaining that he had found them. Other than this statement, the record is silent as to how or when Hickson had obtained the cards. Hickson cannot show that the two counts of receiving stolen property should have been merged. Therefore, we overrule his second assignment of error.[7]

Accordingly, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., DINKELACKER and **MALLORY, JJ.**

To the Clerk:

Enter upon the Journal of the Court on December 2, 2009

per order of the Court _____.

Presiding Judge

[6] *State v. Mughni* (1987), 33 Ohio St.3d 65, 67, 514 N.E.2d 870.
[7] See, generally, *State v. Early*, 10th Dist. No. 01AP-1106, 2002-Ohio-2590, at ¶12.